

John Borlace, Thomas Johnson, John Palmer, Thomas Bennet, William Sarson, Mary Digby, Widow, Jane Mason, Widow, John Hallam, William Taylor, Thomas Wadd, Alice Watts, Widow, William Norman, Susannah Bennet, Widow, Edward Door, John Snow, Ann Forster, Widow, Mary Hollin, Widow, Richard Black, John Kilby, and Henry Bayly,

Plaintiffs in Error.

John Doe, on the Demise of Margaret Savill, Spinster,

Defendant in Error.

### The CASE of the Defendant in Error.

Hillary Term,  
6th of King  
George II.  
1732.

**T**H E said Margaret Savill being a Mortgagee of the Premises in Question, for the principal Sum of 1500 l. brought an Ejectment against the now Plaintiffs in Error, in the Court of King's Bench, at Westminster, in the Name of her Nominal Plaintiff, the said John Doe, for the Mannor of Queenburrough, otherwise Queneyborough, with the Appurtenances, in the County of Leicester, and Twenty Messuages, Twenty Cottages, Twenty Barns, Twenty Stables, Twenty Gardens, Twenty Orchards, Four Hundred Acres of Land, One Hundred and Fifty Acres of Meadow, and One Hundred Acres of Pasture, and Common of Pasture for all manner of Cattle, with the Appurtenances, in Queenburrough, otherwise Queneyborough, aforesaid, and for the Rectory of Queenburrough, otherwise Queneyborough, with the Appurtenances; and the Advowson of the Church of Queenburrough, otherwise Queneyborough, with the Appurtenances; and for all and all manner of Tythes of Corn, Grain, and Hay; and all Tythes whatsoever Annually arising, growing, or renewing from or out of the said Premises, in order to recover the Possession thereof, upon a Lease made by the said Margaret Savill to her said Lessee, for Five Years, from the Seventeenth Day of January then last past.

The Plaintiffs in Error pleaded Not Guilty, and Issue being join'd,

22 March,  
1733.  
Trinity, 7th  
and 8th of  
King George  
the Second.

THE Cause was tried at Leicester Lent Assizes, 1733, before Mr. Justice Probyn, when a general Verdict was, upon full Evidence, found for the Defendant in Error, and Judgment was accordingly given for him.

Trinity, 8th  
and 9th of  
King George  
the Second.

WHEREUPON, the Plaintiffs in Error brought a Writ of Error, returnable in the Exchequer Chamber, and having assigned the general Errors, the Defendant in Error pleaded, That there was no Error in the Judgment; and the Cause was argued by Council on both Sides, before all the then Justices of the Common Pleas, and Barons of the Exchequer, in Trinity Term last; when it was objected, That an Ejectment would not lie for some of the Parcels in the Declaration, and that others of them were not described with sufficient Certainty; but the Objections were over-ruled, and the Judgment affirmed, by the unanimous Concurrence of the whole Court.

UPON this Judgment so given and affirmed, the Plaintiffs in Error have brought this Writ of Error returnable in Parliament.

IT is apprehended, That the Council for the Plaintiffs in Error will insist, (as they did in the Exchequer Chamber) That an Ejectment will not lie of an Advowson, nor of Common in Gross; and that the Defendant in Error ought to have expressed the Nature and Quality of the Tythes in his Declaration.

BUT it is humbly hoped, That the Judgment was rightly given and affirmed; because an Ejectment will undoubtedly lie of an Advowson, Appendant to a Mannor; as it also will of Common Appendant, and of Predial Tythes: And this being a Case after a Verdict, it must be intended, that it appeared upon the Trial, That this Ejectment was brought for such an Advowson, and for such Common of Pasture and Tythes, as an Ejectment will lie for, otherwise the Defendant in Error could not have recovered: And this Intendment ought the rather to take Place, with respect to the Advowson and Common, as there is a Mannor mentioned in the Declaration, to which they may be properly Appendant; and with respect to the Tythes, as there is a Rectory mentioned in the Declaration, which they may be Part of.

THE Defendant in Error therefore humbly prays, That the Judgment so given in the Court of King's Bench, and since affirmed in the Exchequer Chamber, may be affirmed in this Honourable House, with Costs.

N. FAZAKERLEY.  
T. PARKER.



Plaintiffs in Error;

DOE, on the Demise of SAVILL,

Defendant in Error.

The Case of the Defendant in Error.

To be Argued at the Bar of the  
House of LORDS, on *Wednesday*  
the 10<sup>th</sup> Day of March,  
1735.

11. Martij 1735.

The Counsel for the Plt. not insisting on the Errors assigned  
but only desiring he might be excused with respect to Costs.  
Ordered, That Judgm<sup>t</sup>. be affirm'd with Co. Costs.